

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re Applications of) MM DOCKET NO. 93-89
)
AURIO A. MATOS) File No. BPH-911114MS
)
LLOYD SANTIAGO-SANTOS AND)
LOURDES RODRIGUEZ BONET) File No. BPH-911115MP
)
For a Construction Permit for a)
New FM Station on Channel 293A at)
Culebra, Puerto Rico)

To: The Review Board

MASS MEDIA BUREAU'S COMMENTS ON
SUPPLEMENT TO JOINT REQUEST

1. On July 22, 1994, in response to the Review Board's Order, FCC 94R-11 (released July 7, 1994), Aurio A. Matos (" Matos") and Lloyd Santiago-Santos and Lourdes Rodriguez Bonet ("Santiago & Bonet") jointly filed a Supplement to Joint Request for Approval of Settlement Agreement ("Supplement"). The Mass Media Bureau submits the following comments.

2. The applicants seek approval of a Settlement Agreement which contemplates the dismissal of the Santiago & Bonet application and the grant of the Matos application. In consideration for the dismissal of the Santiago & Bonet application, Matos proposes to pay Santiago & Bonet the sum of \$50,000. Additionally, upon the grant of the construction

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permit, Matos proposes to hire Mr. Santiago and Ms. Rodriguez Bonet as part-time consultants over a two-year period in consideration for which they will be compensated in the total amount of \$50,000.

3. Based upon a review of the materials submitted in the Supplement, the Bureau concludes that the applicants have failed to justify reimbursement in the amount of \$50,000. The applicants rely, in part, on an invoice from Isabel Rodriguez Bonet, Esq., in the amount of \$1,000. However, the invoice does not provide any description of the professional services rendered. Therefore, the amount must be disallowed. See Amendment of Section 73.3525, 6 FCC Rcd 85, 87, n. 56 (1990). Similarly, Santiago & Bonet seek reimbursement in the amount of \$1,000 for various trips to Culebra by Mr. Santiago. However, no explanation is provided as to how, if at all, any of the trips related to the captioned proceeding. According, this amount, too, must be disallowed.

4. The Settlement Agreement, at ¶ 5, states that Matos agrees to pay Santiago & Bonet the sum of \$50,000 in consideration for the dismissal of their application. It does not provide for the payment of a lesser amount in the event the Commission disallows the \$50,000 figure. Since the applicants have failed to substantiate the \$50,000 settlement amount, and the Settlement Agreement does not allow for the payment of some lesser amount, the Settlement Agreement cannot be approved.

5. There are additional reasons for disallowing the Settlement agreement. The

Review Board's Order, at ¶ 6, specifically required the applicants to submit "the escrow agreement" referenced in their Settlement Agreement within 15 days of the release of the Order. The Settlement Agreement actually references two escrow agreements: one pertaining to the payment of the \$50,000 settlement amount and a second pertaining to the consulting agreements. See Settlement Agreement at ¶¶ 5 and 6. The Order does not distinguish between the two escrow agreements, and the Supplement, at ¶ 3, represents that only the latter will be forthcoming. Of course, under Section 73.3525 of the Commission's Rules, all ancillary agreements must be filed. Thus, the applicants have failed to comply with the Order by not timely filing at least one escrow agreement. Furthermore, they have failed to comply with Section 73.3525 by not filing all escrow agreements.

6. Additionally, as noted in the Bureau's April 28, 1994, Comments on Joint Request for Approval of Settlement Agreement, at ¶ 5, the Settlement Agreement is conditioned upon the grant of Matos' February 7, 1994, Petition for Leave to Amend. See Settlement Agreement, at pp. 1-2. However, Matos is no longer prosecuting that technical amendment. Since the Settlement Agreement is conditioned upon the grant of an amendment that Matos has abandoned, the Settlement Agreement cannot be granted unless the provision containing the condition is excised or modified.

7. The Bureau also submits that the two consulting agreements raise serious questions about the *bona fides* of the proposed settlement. As noted above, Matos proposes to hire Mr. Santiago and Ms. Rodriguez Bonet as part-time consultants. As a consequence of this

arrangement, Santiago & Bonet would reap an additional \$50,000 over and above their legitimate and prudent expenses. However, the consulting agreements provided in the Supplement do not *require* either Mr. Santiago or Ms. Rodriguez Bonet to furnish any minimum number of hours of work in consideration for their salaries. See Tracy A. Moore d/b/a Gifford Orion Broadcasting, Ltd., 9 FCC Rcd 314, 315, n. 4 (1993). Additionally, the descriptions of the services that Mr. Santiago and Ms. Rodriguez Bonet will provide for Matos' new Class A station in Culebra are, in the Bureau's opinion, unreasonably vague.¹ Also, Matos is an experienced broadcaster in his own right. As revealed in Aurio A. Matos, 8 FCC Rcd 7920 (ALJ 1993), Matos has served as the general manager for three radio stations since 1980. His need for the consulting services of Santiago & Bonet is questionable. In sum, the Bureau is unable to conclude that the consulting arrangement is not a sham to skirt the Commission's limitations on reimbursable expenses.

¹ Mr. Santiago will provide consulting services "relating to the establishment of sales record keeping systems, marketing strategies, and promotional strategies" Ms. Rodriguez Bonet will provide consulting services "relating to the establishment of accounting and bookkeeping systems and formulation of cost and revenue projections"

5. Accordingly, the Review Board should not approve the Settlement Agreement.

Respectfully submitted,
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August 4, 1994

CERTIFICATE OF SERVICE

I, Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau, certify that I have, on this 4th day of August 1994, sent by regular First Class United States mail copies of the foregoing "Mass Media Bureau's Comments on Supplement to Joint Request" to:

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